

Arbella Mutual Insurance (Massachusetts)
 Auto Club of Michigan Group (Michigan)
 Commerce Group, Inc. (Massachusetts)
 Commercial Union Insurance Companies
 (Maine)
 Concord Group Insurance Companies
 (Vermont)
 Kentucky Farm Bureau Group (Kentucky)
 Nodak Mutual Insurance Company (North
 Dakota)
 Southern Farm Bureau Group (Arkansas,
 Mississippi)
 Tennessee Farmers Companies (Tennessee)

5. Appendix C to part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
 ARI (Automotive Rentals, Inc.)
 Associates Leasing Inc.
 AT&T Automotive Services, Inc.
 Avis, Inc.
 Budget Rent-A-Car Corporation
 Dollar Rent-A-Car Systems, Inc.
 Donlen Corporation
 Enterprise Rent-A-Car
 GE Capital Fleet Services
 Hertz Rent-A-Car Division (subsidiary of
 Hertz Corporation)
 Lease Plan USA, Inc.
 National Car Rental System, Inc.
 Penske Truck Leasing Company
 PHH Vehicle Management Services
 Ryder System, Inc. (Both rental and leasing
 operations)
 U-Haul International, Inc. (Subsidiary of
 AMERCO)
 USL Capital Fleet Services
 Wheels Inc.

Issued on: May 10, 1999.

L. Robert Shelton,

*Associate Administrator for Safety
 Performance Standards.*

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DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
 Administration**

50 CFR Parts 223, 224, and 226

[Docket No. 990504118-9118-01; I.D.
 031199F]

RIN 0648-XA25

**Endangered and Threatened Species;
 Notification of Finding on a Petition to
 List Summer Steelhead Trout in the
 Middle Fork of the Eel River, California**

AGENCY: National Marine Fisheries
 Service (NMFS), National Oceanic and
 Atmospheric Administration (NOAA),
 Commerce.

ACTION: Notification of petition finding.

SUMMARY: NMFS announces a finding for a petition to list summer steelhead trout (*Oncorhynchus mykiss*) and designate critical habitat in the Middle Fork of the Eel River, California, pursuant to the Endangered Species Act (ESA) of 1973. NMFS finds that the petitioner has not presented any new, substantial scientific or commercial information indicating that the petitioned action may be warranted. NMFS previously reviewed the data which was submitted by the petitioner for this population and has published its findings in a west coast status review for steelhead trout and subsequent **Federal Register** documents (see "Previous Federal ESA Actions Related to West Coast Steelhead").

DATES: The finding announced in this document was made on April 29, 1999.

ADDRESSES: Requests for information concerning this petition should be sent to Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910; telephone: (301)713-1401.

FOR FURTHER INFORMATION CONTACT: Craig Wingert at (562) 980-4021 or Chris Mobley at (301)713-1401.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. *et seq.*), requires that NMFS make a finding on whether a petition to list a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. NMFS' standard for substantial information is stated at 50 CFR 424.14(b) as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." This finding is to be based on all information available to NMFS at the time. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, NMFS is also required to promptly commence a review of the status of the involved species.

NMFS has made a 90-day finding on a petition to list summer steelhead trout (*O. mykiss*) in the Middle Fork of the Eel River, California, and designate critical habitat pursuant to the ESA. The petition, dated December 10, 1998, was submitted by Mr. David Drell, representing the Willits Environmental Center, and received by NMFS on December 15, 1998. The petitioner

requested that NMFS list summer steelhead trout in the Middle Fork of the Eel River, California, as endangered on an emergency basis, and also designate critical habitat for that population under the ESA.

Previous Federal ESA Actions Related to West Coast Steelhead

On May 20, 1993, NMFS announced its intent to conduct a status review to identify all coastal steelhead Evolutionarily Significant Units (ESUs) within California, Oregon, and Washington and to determine whether any identified ESUs warranted listing under the ESA. Subsequently, on February 16, 1994, NMFS received a petition from the Oregon Natural Resources Council and 15 co-petitioners to list all steelhead (or specific ESUs, races, or stocks) within the states of California, Oregon, Washington, and Idaho. In response to this petition, NMFS announced the expansion of its status review to include inland steelhead populations occurring in eastern Washington and Oregon and the State of Idaho (59 FR 27527, May 27, 1994).

In August 1996, NMFS published the results of its status review for west coast steelhead (Busby *et al.*, 1996; NOAA Technical Memorandum NMFS-NWFSC-27). Based on a review of the available information on steelhead genetics, phylogeny and life history, and environmental features that may affect steelhead, NMFS identified a total of 15 ESUs of west coast steelhead, including 12 ESUs for the coastal form and 3 for the inland form. One of the coastal ESUs, the Northern California coast steelhead ESU, includes the summer steelhead population in the Middle Fork Eel River which is the subject of the petitioned action.

On August 9, 1996, NMFS published a proposed rule to list 10 of these steelhead ESUs as threatened or endangered under the ESA and solicited comments on the proposal (61 FR 41541, August 9, 1996). In the proposed rule, NMFS determined that the Northern California coast ESU, which includes all summer- and winter-run steelhead populations from Redwood Creek in Humboldt County through the Gualala River, inclusive, warranted listing as a threatened species.

On August 18, 1997, NMFS published a final rule listing five steelhead ESUs as threatened or endangered under the ESA (62 FR 43937). In a separate document also published on August 18, 1997, NMFS determined that substantial scientific disagreement remained for five proposed steelhead ESUs, including the Northern California coast steelhead

ESU (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these five remaining steelhead ESUs for 6 months, until February 9, 1998, for the purpose of soliciting and analyzing additional data. By court order, NMFS' deadline for issuing final determinations on these five remaining steelhead ESUs was extended to March 13, 1998.

During the 6-month period of deferral, NMFS received new scientific information concerning the status of the proposed ESUs. This new information was considered by NMFS' Biological Review Team (BRT) and incorporated into an updated status review that analyzed and summarized the new information [Memorandum to William Stelle and William Hogarth from M. Schiewe, December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead]. In the update, NMFS re-examined and addressed several issues relating to ESU definitions and risk assessment for the deferred ESUs, which included the Northern California coast steelhead ESU. In addition to other issues, the re-examination included the issue of including both summer and winter steelhead populations in the same ESU. Also during this period, NMFS assessed the status of existing hatchery stocks to determine their ESU status [Memorandum to William Stelle and William Hogarth from Michael Schiewe, January 13, 1998, Status Review Update for Deferred ESUs of West Coast Steelhead: Hatchery Populations]. Copies of these memoranda are available upon request (see ADDRESSES).

On March 19, 1998, NMFS published a final rule to list the previously deferred Lower Columbia River and Central Valley steelhead ESUs as threatened species (63 FR 13347). In the same document, NMFS determined that the three other deferred steelhead ESUs, which included the Oregon Coast, Klamath Mountains Province (KMP), and Northern California coast ESUs, did not warrant listing, based on the best available scientific information and a review of conservation efforts being made. However, NMFS indicated that it remained concerned about the status of steelhead trout in these three ESUs, and, therefore, classified them as candidate species. In addition, NMFS committed to re-evaluate the status of these three ESUs within 4 years to determine whether listing was warranted at that time.

Analysis of Petition

The petitioner requested that NMFS list summer steelhead trout in the

Middle Fork of the Eel River, California, as endangered on an emergency basis and also designate critical habitat for that population under the ESA. In support of the petition, the petitioner submitted various documents and information to NMFS. The petitioner requested that the population be listed on an emergency basis due to a large landslide that was identified as severely impacting the ability of the population to reproduce, as well as habitat degradation from historic and continuing land use activities (i.e. agriculture and associated activities) occurring in the basin. The petitioner also cited continuing low returns of adults, severe poaching, and genetic differences between summer and winter steelhead trout as additional reasons to list this population.

As noted in the preceding section of this document, NMFS has previously identified a coastal steelhead ESU (i.e. the Northern California coast steelhead ESU) which includes the Middle Fork Eel River summer steelhead population (Busby *et al.*, 1996; 61 FR 41541, August 9, 1996; and 63 FR 13347, March 19, 1998). NMFS used its existing policies on how it would define "species" or "distinct population segments" under the ESA in reaching its determination that the Northern California coast steelhead ESU was the proper population unit to consider for listing under the ESA. These policies include NMFS' original November 20, 1991, policy describing how it would apply the ESA definition of "species" to anadromous salmonid species (56 FR 58612), and a more recent joint NMFS and Fish and Wildlife Service policy regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996).

Under these policies, NMFS considers one or more naturally reproducing salmonid populations to be distinct, and therefore, a "species" under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species, and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance on applying this policy is contained in a NOAA Technical Memorandum entitled

"Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991). Copies of the policies and the Technical Memorandum are available upon request (see ADDRESSES).

The Northern California coast steelhead ESU, which includes the Middle Fork Eel River summer steelhead population, is comprised of all steelhead populations that occupy coastal river basins ranging from Redwood Creek in Humboldt County to the Gualala River, inclusive. Dominant vegetation along the coast is redwood forest, while some interior basins are much drier than surrounding areas and are characterized by many endemic species. This area includes the extreme southern end of the contiguous portion of the Coast Range Ecoregion (Omernick, 1987). Elevated stream temperatures are a factor in some of the larger river basins (greater than 20° C), but not to the extent that they are in river basins farther south. Precipitation is generally higher in this geographic area than in regions to the south, averaging 100 to 200 centimeters of rainfall annually (Donley *et al.*, 1979). With the exception of major river basins such as the Eel, most rivers in this region have peak flows of short duration. Strong and consistent coastal upwelling begins at about Cape Blanco and continues south into central California, resulting in a relatively productive near-shore marine environment.

The Northern California coast ESU includes both winter and summer steelhead populations, including the Middle Fork Eel River summer steelhead population, which is presently considered to be the southernmost population of summer steelhead. Half-pounder juveniles also occur in this ESU, specifically in the Mad and Eel Rivers. Snyder (1925) first described the half-pounder from the Eel River; however, Cramer *et al.* (1995) suggested that adults with the half-pounder juvenile life history may not spawn south of the Klamath River Basin. As with the Rogue and Klamath Rivers, some of the larger rivers in this area have migrating steelhead year-round, and seasonal runs have been named. River entry ranges from August through June and spawning from December through April, with peak spawning in January in the larger basins and late February and March in the smaller coastal basins.

The petitioner cited genetic differences between summer and winter run steelhead as a key factor for requesting that NMFS list the Middle Fork Eel River summer steelhead

population. While NMFS considers both life history forms of steelhead (winter and summer) to be important components of diversity within the species and individual ESUs, the best and most recently available genetic data reinforces previous conclusions that within a given geographic area, summer and winter steelhead typically are more genetically similar to one another than either is to populations with similar run timing in different geographic areas or ESUs (Busby *et al.*, 1996; Memorandum from M. Schiewe dated December 18, 1997, Status of Deferred and Candidate ESUs of West Coast Steelhead). These genetic relationships suggest that an ESU which included only summer-run populations (or conversely only winter-run populations) from different geographic areas would be an inappropriate population unit to consider for listing. The only biologically meaningful way to have summer and winter steelhead populations in separate ESUs would be to have a very large number of very small ESUs, most consisting of just one or a very few populations. This would be inconsistent with the conservative approach NMFS has taken in defining ESUs (i.e. distinct population segments) for other anadromous Pacific salmonids. Taking these factors into consideration, NMFS has previously determined that summer and winter steelhead should be considered part of the same ESU in geographic areas where they co-occur (Busby *et al.*, 1996; 61 FR 41541, August 9, 1996; and 63 FR 13347, March 19, 1998), including the Northern California coast steelhead ESU.

NMFS agrees with the petitioner that many factors, past and present, have contributed to the decline of steelhead in the Northern California coast ESU and elsewhere on the west coast. NMFS also recognizes that natural environmental fluctuations have likely played a role in the species' recent declines. For listed or candidate steelhead trout ESUs, the present condition of the population is a result of long-standing, human-induced conditions (i.e., harvest, habitat degradation, and artificial propagation) that serve to exacerbate the negative effects of adverse environmental conditions (i.e., drought and poor ocean conditions). These human-induced impacts have likely reduced the species' resiliency to such natural factors for decline as drought and poor ocean conditions (NMFS, 1996). Relative to west coast steelhead, NMFS has prepared a supporting document that addresses the factors leading to the decline of this species entitled "Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996). This report, which is available upon request (see ADDRESSES), concludes that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline of west coast steelhead.

Determination

NMFS previously reviewed the information submitted by the petitioner and has published its findings in a west coast status review for steelhead trout and subsequent **Federal Register** documents (see "Previous Federal ESA Actions Related to West Coast Steelhead"). NMFS believes that information contained in its status review (Busby *et al.*, 1996) and other reports (NMFS, 1996; and NMFS, 1996b) for west coast steelhead, together with more recent information obtained in response to the proposed and final rules (see "Previous Federal ESA Actions Related to West Coast Steelhead"), represent the best scientific information presently available for northern California coast steelhead. NMFS has conducted an exhaustive review of all available information relevant to the status of this species. NMFS has also solicited information and opinion from all interested parties, including peer reviewers.

NMFS has reviewed the petition, the literature cited in the petition, and other available literature and information. Based on this review, NMFS finds that the petitioned action does not present substantial new information indicating that listing summer steelhead in the Middle Fork Eel River, California, may be warranted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 10, 1999.

Penelope D. Dalton,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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